



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

FILE

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA. 17120
(717) 787-3391

ERNEST D. PREATE, JR.
ATTORNEY GENERAL

July 7, 1992

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Federal Communications Commission
Office of the Secretary

Public Protection Division
14th Floor Strawberry Square
Harrisburg, PA 17120
(717) 787-9716

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FCC MAIL BRANCH

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 22
Washington, D.C. 20554

Dear Ms. Searcy:

Re: RM-7990

Enclosed please find an original and nine copies of Comments in the above captioned matter filed on behalf of the National Association of Attorneys General, 900 Number Subcommittee and State Attorneys General.

Sincerely,

Daniel Clearfield
Executive Deputy Attorney General

Enclosures
DC/ss/avcw
cc: Downtown Copy Center

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF :
 :
 PETITION FOR RULEMAKING : RM DOCKET NO. 7990
 REGARDING 800 NUMBER SERVICE :

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COMMENTS OF THE NAAG 900 NUMBER
SUBCOMMITTEE AND STATE ATTORNEYS GENERAL FCC MAIL BRANCH

The 900 Number Subcommittee of the Consumer Protection Committee, National Association of Attorneys General (hereinafter "the States") hereby submits these comments in response to the FCC's request at the above docket for comments concerning the States' request that the Commission issue an order that interstate carriers be prohibited from providing standard inward WATS (800) service where callers are billed for the call, or for a "service" provided on the call, by the use of either tone generation technology, automatic number identification or billing detail information. The States original Petition was filed by the Subcommittee and joined in by the States of Connecticut, Tennessee, Pennsylvania, New Jersey, Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

The Need for A Rule

The States reiterate and affirm their position that a rule is needed to prohibit the use of 800 number service, universally viewed as "free" by

consumers, as a device for imposing a charge on the caller for the call or for a so-called "service" provided on the call. The need and justification for such a rule is adequately explained in the States' Petition for Clarification and Modification which is hereby incorporated by reference.

It is a notorious fact that WATS 800 service is so associated with free calling that, unless a preexisting billing service or arrangement exists, any scheme or device used to charge callers for the call is inherently deceptive and must be banned. A rule promulgated at this juncture will stop the expansion of this troubling practice.

Consistent with our Petition therefore, a rule should be promulgated as soon as possible. Also consistent with our original Petition, the States recognize, the need for two limited exceptions:

1. Where consumers have an established, pre-subscription relationship such that the call would be exempt from the definition of a pay-per-call service as defined in §64.709 of the Commission's rules; and
2. Where the caller is charged for a "service" provided on the 800 number call by the use of an independent, pre-established billing arrangement (a credit card).

A rule consistent with the above would be substantially identical to the tariff provision recently filed by AT&T Communications and Sprint. The filing of these rules reflect the concern that carriers have for the continued viability of 800 service. Consumers must be protected from deceptive and misleading attempts to charge for 800 number calls

they rightfully consider to be "free" if 800 service is going to continue to be used confidently by the calling public. If consumers have to worry that when they make an 800 number call they may end up receiving a separate invoice or a charge on their phone bill, the service will very quickly gain the reputation of a "suspect" telephone service. If this occurs, both the telephone consuming public and the entire telephone industry will be the losers.

While the recent tariff filings by AT&T and Sprint are helpful they are not enough. As the FCC is well aware, in addition to the major carriers (AT&T, Sprint, and MCI) over two hundred 800 "NNX" codes have been assigned to 150 different carriers. Carrier & Code Assignments for 800 Service, 900 Service and Carrier Identification Codes, FCC Industry Analysis Division (April 23, 1992) Table 1. Even if MCI promulgated a tariff in the future, failure to enact a rule prohibiting any carrier assigned an interstate 800 number NNX code from permitting the service to be used for pay-per-call charges will have the likely result of "migrating" these deceptive schemes from the major carriers who have banned them to other, smaller carriers. From a consumer's perspective, of course, if even one or two carriers permit their 800 numbers to be used in this inherently deceptive way the effect will be devastating.

The Rule Will not Affect the Development of Legitimate Information Services

The rule proposed by the States represent a reasonable step to protect consumers and the viability of 800 service. The best evidence of

this is the fact that at least two carriers have already implemented the measures the States are proposing. Their actions indicate that the reasonable development of innovative and useful information services will not be stymied in any way by the universal application of these same protections. There is no "service" considered for use through an 800 number that could not be used just as easily with a 900 number or some other pay-per-call technology. For example, information service providers can utilize 900 number services as "gateways" simply by beginning to assess charges only after pertinent disclosures have been made and the caller has chosen to purchase the service. These methods would permit an information service provider to offer a free menu of its services yet prevent the likelihood of callers being charged for services which - because they are being offered through 800 numbers - are reasonably perceived to be free of charge. Again, simply permitting charges on a supposedly "free" 800 number is sufficient to confuse consumers and cause unwanted charges. Accordingly, there is no valid reason for declining to establish these needed protections.

Conclusion

The FCC should amend its rules to include a provision banning, with certain narrow exceptions, the use of 800 numbers for pay-per-call services. The tariff language used by AT&T Communications to implement its ban would be acceptable as a model for such a provision.

We urge the FCC to act quickly to address this problem before the unscrupulous and deceptive practices of some in the information industry damage yet another telecommunications service.


Respectfully submitted,

NAAG 900 NUMBER SUBCOMMITTEE
Robert Del Tufo, Attorney General
New Jersey, Chairman

NAAG CONSUMER PROTECTION COMMITTEE
Charles W. Burson, Attorney General
State of Tennessee

COMMONWEALTH OF PENNSYLVANIA
ERNEST D. PREATE, JR.
ATTORNEY GENERAL

By:


Daniel Clearfield
Executive Deputy Attorney General
Public Protection Division
14th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-9716

DATED: July 7, 1992

The following States Submitted the original Petition for Clarification and Modification:

STATE OF CONNECTICUT
RICHARD BLUMENTHAL, ATTORNEY GENERAL

STATE OF ALABAMA
JAMES H. EVANS, ATTORNEY GENERAL

STATE OF ARIZONA
GRANT WOODS, ATTORNEY GENERAL

STATE OF ARKANSAS
WINSTON BRYANT, ATTORNEY GENERAL

STATE OF FLORIDA
ROBERT A. BUTTERWORTH, ATTORNEY GENERAL

STATE OF IDAHO
LARRY ECHOHAWK, ATTORNEY GENERAL

STATE OF ILLINOIS
ROLAND W. BURRIS, ATTORNEY GENERAL

STATE OF INDIANA
LINLEY E. PEARSON, ATTORNEY GENERAL

STATE OF IOWA
BONNIE J. CAMPBELL, ATTORNEY GENERAL

STATE OF KANSAS
ROBERT T. STEPHAN, ATTORNEY GENERAL

STATE OF LOUISIANA
RICHARD IEYOUB, ATTORNEY GENERAL

STATE OF MAINE
MICHAEL E. CARPENTER, ATTORNEY GENERAL

STATE OF MARYLAND
J. JOSEPH CURRAN, JR., ATTORNEY GENERAL

COMMONWEALTH OF MASSACHUSETTS
SCOTT HARSHBARGER, ATTORNEY GENERAL

STATE OF MICHIGAN
FRANK J. KELLEY, ATTORNEY GENERAL

STATE OF MINNESOTA
HUBERT H. HUMPHREY, III, ATTORNEY GENERAL

STATE OF MISSOURI
WILLIAM L. WEBSTER, ATTORNEY GENERAL

STATE OF NEVADA
FRANKIE SUE DEL PAPA, ATTORNEY GENERAL

STATE OF NEW HAMPSHIRE
JOHN P. ARNOLD, ATTORNEY GENERAL

STATE OF NEW MEXICO
TOM UDALL, ATTORNEY GENERAL

STATE OF NORTH CAROLINA
LACY H. THORNBURG, ATTORNEY GENERAL

STATE OF NORTH DAKOTA
NICHOLAS J. SPAETH, ATTORNEY GENERAL

STATE OF OREGON
CHARLES S. CROOKHAM, ATTORNEY GENERAL

STATE OF RHODE ISLAND
JAMES E. O'NEIL, ATTORNEY GENERAL

STATE OF SOUTH DAKOTA
MARK W. BARNETT, ATTORNEY GENERAL

STATE OF TEXAS
DAN MORALES, ATTORNEY GENERAL

STATE OF VERMONT
JEFFREY L. AMESTOY, ATTORNEY GENERAL

COMMONWEALTH OF VIRGINIA
MARY SUE TERRY, ATTORNEY GENERAL

STATE OF WASHINGTON
KENNETH O. EIKENBERRY, ATTORNEY GENERAL

STATE OF WISCONSIN
JAMES E. DOYLE, ATTORNEY GENERAL

STATE OF WYOMING
JOSEPH B. MEYER, ATTORNEY GENERAL